COURTS-MARTIAL

MILLAW 5.3

Terminal Objective

- Upon completion of this unit of instruction, the student will demonstrate knowledge of the fundamental principles and administrative procedures pertaining to military law.

ENABLING OBJECTIVES

- 5.31 Define military custody
- 5.32 Describe the relationship between apprehension and probable cause
- 5.33 Describe the amount of force to be used to apprehend a military member
- 5.34 List the military members that are able to apprehend

ENABLING OBJECTIVES

- 5.35 Describe when pretrial restraint should be used
- 5.36 Describe when a military member can demand trial by Courts-Martial
- 5.37 List the documents required to convene a Courts-Martial
- 5.38 Describe the 3 types of Courts-Martial

ENABLING OBJECTIVES

- 5.39 List the rights of an accused military member
- 5.40 Explain the prerequisites for Courts-Martial jurisdiction
- 5.41 Discuss the four levels of appeal and automatic review

Question and Answers Policy

Apprehension

- The taking of a person into custody.
- Apprehension must be based on:
  - Probable Cause - exists when there are reasonable grounds to believe that an offense has been committed or is being committed.
- Custody in the military is the temporary restraint of a service member.

Apprehension

- Reasonable force if member should resist: use only enough force to apprehend them.
- State: "I am LT Smith. You are under military apprehension for stealing."

Apprehension

- Who may apprehend?
  - Military Law Enforcement
  - Security/Master at Arms/Shore Patrol/Designated Personnel
  - Petty Officers and above
- Naval officers can apprehend all members subject to the UCMJ, regardless of rank.

Pretrial Restraint

- Moral or physical restraint on a person's liberty, which is imposed before and during disposition of offenses
- When to impose:
  - serious crime
  - ensure presence of accused at trial
  - mental state

Types of Pretrial Restraint

- Moral Restraint: Ordered to stay within a certain boundary
- Conditions on Liberty
- Restriction in lieu of confinement - continues duties (Correctional Custody also)
- Confinement - suspends normal duties (arrest)

Pretrial Confinement Physical Restraint

- Confinement must show intent to take member to Courts-Martial.
- Must have Confinement Order
- Pre-confinement physical exam
- Delivery of the accused
- Get prisoner receipt signed
- NOTE: The CO may impose pretrial restraint to any officer or enlisted member.

Courts-Martial

Military court, convened under authority of government and the UCMJ, for trying and punishing offenses committed by members of the Armed Forces and other persons subject to UCMJ.

Prerequisites for Courts-Martial Jurisdiction

- Court properly convened, case properly referred
- Court properly constituted
- Court has jurisdiction over person
- Jurisdiction over offense
- Each charge referred to court by competent authority

Prerequisites for Courts-Martial Jurisdiction

- The only time that a service member can refuse CO mast and demand trial by Courts- Martial is when they are on shore duty.

2 Documents required to Convene a Courts-Martial

I. Convening Order - Names participants and type of court. Written by the convening authority. Does not mention Accused or Offense

II. Charge Sheet- Names the accused and offense(s)

Convening Authority (CA)

- The Courts-Martial is created by written orders of the CA.
- Their main purpose is to create the court.

Rights of the Accused

- Article 31 Rights - informs them of their charges, right to remain silent, right to make a statement.
- Tempia Rights - informs them of their right to legal counsel
- Booker Rights - informs them of their right to accept or refuse NJP or a Summary Courts- Martial.

3 Types of Courts-Martial in Order of Increasing Power

I. Summary Courts-Martial- (SCM)
II. Special Courts-Martial - (SPCM)
III. General Courts-Martial - (GCM)

I. Summary Courts-Martial

- "One officer Courts-Martial"
- Only tries Enlisted Personnel
- CANNOT try capital offenses
- Member has **NO** right to <u>military</u> counsel
- Cannot administer punitive discharge
- Maximum punishment differs for E-4 and below and E-5 and above
- Least formal Courts-Martial

Punishments - SCM

- Confinement for 30 days (E4 and below)
- Hard labor w/o confinement - 45 days
- Forfeiture of 2/3 pay for 1 month
- Reduction in Rate:
- -One pay grade for E5 and above
- -No limit E4 and below
- Restriction for up to 60 days

II. Special Courts-Martial

- Tries all persons subject to UCMJ
- Right to 3 members (jurors), military judge, trial, and defense counsel (civilian or military)
- Tries all offenses
- 1/3 members can be enlisted

Punishments - SPCM

- Confinement for 6 months
- Hard labor w/o confinement for 3 months
- Forfeiture 2/3 pay for 6 months
- Reduction in Rate- no limit (Enlisted)
- Loss of Lineal numbers - (Officers)
- Bad Conduct Discharge (Enlisted)
- Max punishment: BCD, 6 months confinement, forfeit 2/3 pay for 6 months, reduction in rate to E-1

III. General Courts-Martial

- Tries all subject to UCMJ
- 5 members, military judge, trial, and defense counsel
- 1/3 members can be enlisted
- Max penalties provided by law, listed in MCM
- Only military court that can give Dishonorable Discharge to Enlisted, Dismissal to Officers
- Highest Level of Courts-Martial

Punishments - GCM

- Death Penalty
- Confinement at hard labor for Life
- Loss of all pay and allowances
- Reduction in Rate- no limit (Enlisted only)
- Dishonorable Discharge (Enlisted only)
- Dismissal (Officers)

6 Types of Punishments

I. BCD/DD - Enlisted personnel only.

BCD is for bad conduct less severe than DD.

II. Confinement - Physical restraint in brig at hard labor. Enlisted personnel only.

III. Hard Labor w/o confinement - Enlisted

IV. Fines/Forfeiture of Pay

V. RIR

VI. Loss of Lineal Numbers

Appeal and Automatic Review

- Appeal at any time for any reason
- All cases automatically reviewed for correctness.
- Not guilty - merely a formality
- Level of review depends on sentence and status of accused.
- Courts-Martial may result in Federal conviction

4 Levels of Appeal and Automatic Review

I. Convening Authority

II. Officer Exercising General Courts-Martial

Jurisdiction

III. Navy-Marine Corps Court of Appeals

IV. Court of Appeals for the Armed Forces

I. Convening Authority

- Commanding Officer and Legal Officer
- May correct errors found
- Can reduce sentence

II. Officer Exercising General Courts-Martial Jurisdiction

- Every Courts-Martial reviewed to this level

III. Navy/Marine Corps Court of Military Appeals

- One per service
- Three Military judges
- Located in Washington, D.C.
- Reviews all cases where accused received punitive discharge (BCD/DD) or Confinement at hard labor for one year or more.

IV. Court of Appeals for the Armed Forces

- Highest Military Court
- 5 civilian judges appointed by the President for 15 year terms.
- Reviews all cases where death penalty is awarded.
- Policy cases referred by the JAG
- Requested by accused
- Accused or U.S. can seek further review by the Supreme Court of the United States.